

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

DWAYNE CHAPPLE,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 4:12-CV-0017-AGF
	)	
MISSOURI DEPARTMENT OF	)	
CORRECTIONS,	)	
	)	
Respondent.	)	

**MEMORANDUM AND ORDER**

        This matter is before the Court upon its own motion. Petitioner submitted a petition to the Court requesting a declaratory judgment stating that he is entitled to time served on a state criminal conviction. In the interests of justice, the Clerk provisionally docketed the petition as a petition for writ of habeas corpus under 28 U.S.C. § 2254.

        Before the Court will *sua sponte* characterize the instant filing as a § 2254 petition, petitioner will be given the opportunity to either consent to the classification or withdraw the filing. See, e.g., Morales v. United States, 304 F.3d 764, 767 (8th Cir. 2002).

        Petitioner is warned that if he consents to the classification of the instant filing as a petition under § 2254, any future § 2254 petition will be subject to the restrictions on filing second or successive motions. That is, petitioner will not be permitted to

bring a second or successive § 2254 motion unless the United States Court of Appeals for the Eighth Circuit certifies that the second or successive motion meets the requirements set forth in 28 U.S.C. § 2244(b)(3)(A). Furthermore, petitioner is warned that § 2254 petitions are subject to a one-year limitations period. See 28 U.S.C. § 2244(d).

If petitioner consents to the characterization of the instant filing as a § 2254 petition, he must inform the Court of his decision, in writing, within thirty days of the date of this Order. Furthermore, if petitioner consents to the characterization, then he must file an amended § 2254 motion on the Court-provided form within thirty days of the date of this Order.

If petition opposes the characterization, or if petitioner fails to respond to this Order, then the Court will dismiss the action without prejudice and without characterizing the filing as a § 2254 motion.

Accordingly,

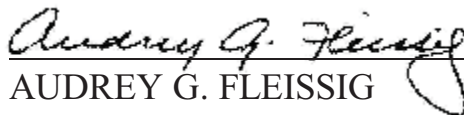
**IT IS HEREBY ORDERED** that petitioner shall have thirty (30) days from the date of this Order to formally consent, in writing, to the Court's characterization of the instant filing as § 2254 motion.

**IT IS FURTHER ORDERED** that if petitioner consents to the characterization, then he must file an amended § 2254 motion on the Court-provided form within thirty (30) days of the date of this Order.

**IT IS FURTHER ORDERED** that if petitioner does not consent to the characterization of the instant filing as a § 2254 petition, or if petitioner fails to timely respond to this Order, then the Court will dismiss the action without prejudice and without characterizing the filing as a § 2254 petition.

**IT IS FURTHER ORDERED** that the Clerk shall mail to plaintiff a copy of the Court's form petitioner for writ of habeas corpus under 28 U.S.C. § 2254.

Dated this 13th day of January, 2012.

A handwritten signature in cursive script, reading "Audrey G. Fleissig", is written over a horizontal line.

AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE